

No. 15926 ✓

United States
Court of Appeals
for the Ninth Circuit

ALFRED V. HAGEN,

Appellant,

vs.

CITY OF PALMER,

Appellee.

Transcript of Record

Appeal from the District Court for the
Territory of Alaska,
Third Division

FILED
JUN 20 1958
PAUL P. O'BRIEN, CLERK

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NAMES AND ADDRESSES OF ATTORNEYS

BOYKO, TALBOT & TULIN,

Turnagain Arms Bldg.,
Anchorage, Alaska ;

EDGAR PAUL BOYKO,

1155 Jones St.,
San Francisco, Calif.,

For the Appellant.

JOHN D. SHAW,

P. O. Box 1926,
Palmer, Alaska,

For the Appellee.

In the District Court for the District of Alaska,
Third Division

No. 3582—Cr.

Time: 3:10 P. M.

Nov. 21, '56

CITY OF PALMER

PROCEEDINGS IN THE MAGISTRATE
COURT

Defendant: Alfred V. Hagen

Complainant: Bernard R. Bouwens

Charge: Failure to file Sales Tax for month of
August, 1956. Plea of not guilty entered and
motion for continuance made.

Motion granted.

Trial set for December 4, 1956, 2:00 P.M.

I certify the above is a true and complete copy of
proceedings held in Magistrate Court, Palmer,
Alaska, November 21, 1956.

[Seal] /s/ L. C. STOCK,
City Magistrate.

Magistrate Court, City of Palmer

12-4-56.

Time: 2:00 P.M.

Defendant: Alfred V. Hagen

Complainant: Bernard R. Bouwens

Complaint: Failure to file Sales Tax Returns for August, 1956.

Mr. Hagen represented by Attorney Boyko.

Motion made to quash: Denied.

Motion to disqualify Magistrate: Denied.

Mr. Shaw, City Attorney, called Mr. Bouwens and Louise Loberg to identify.

City Records presented in evidence.

Mr. Boyko, called Mr. Hagen who stated he had filed & paid sales tax for Aug.

Under cross-examination by Mr. Shaw, Mr. Hagen stated he had paid on Nov. 15.

Verdict: Guilty.

Sentence: \$50.00 Fine.

Oral Notice of Appeal given.

Appeal Bond set at \$100.00.

I certify the above is a true and complete copy of proceedings held in Magistrate Court, Palmer, Alaska, December 4, 1956.

[Seal] /s/ L. C. STOCK,
City Magistrate.

In the Municipal Magistrate's Court for the
City of Palmer, Territory of Alaska

No. 111

CITY OF PALMER,

vs.

ALFRED HAGEN.

WARRANT OF ARREST

The City of Palmer, Alaska

To the Chief of Police of the City of Palmer, Alaska
or to Any Police Officer of the Said City,
Greetings:

You Are Hereby Commanded to forthwith arrest and take into your custody Alfred Hagen, the above-named defendant, a complaint having been filed in the above-entitled court and cause charging the said defendant with the crime of Failure to file sales tax return for the month of August, 1956, in violation of Section 6, Chapter 40, Palmer General Code as is more particularly set forth in said complaint, and bring him, the said Alfred Hagen before me to answer the said complaint, and to be further dealt with according to law.

Hereof Fail Not, and make return of this writ with your doing endorsed thereon.

Given under my hand and seal, at Palmer, Alaska,
this 15th day of November, 1956.

/s/ L. C. STOCK,

Municipal Magistrate of the
City of Palmer, Alaska.

In the Municipal Court, City of Palmer,
Territory of Alaska

No. 137

THE CITY OF PALMER, a Municipal Corpora-
tion,

Plaintiff,

vs.

ALFRED V. HAGEN, d/b/a VALLEY THEA-
TRE,

Defendant.

COMPLAINT

For Violation of Ordinance No. 40

Alfred V. Hagen is accused by Bernard R. Bouwens in this Complaint of a misdemeanor, that of failure to file sales tax returns committed as follows to wit:

The said Alfred V. Hagen, d/b/a Valley Theatre in the City of Palmer, Alaska and within the jurisdiction of this Court, did, wilfully

Fail to file a sales tax return for retail sales and service made and performed during the month of August, 1956, in violation of Section No. 6, Ordinance No. 40, and contrary to said Ordinance of the said City of Palmer, in such case made and provided, and against the peace and dignity of the People.

/s/ BERNARD R. BOUWENS,
(Complainant.)

Territory of Alaska,
City of Palmer—ss.

I, s/s Bernard R. Bouwens being first duly sworn,
depose and say, that I have made complaint as afore-
said, and that said complaint is true.

/s/ BERNARD R. BOUWENS,
(Complainant.)

Subscribed and sworn to before me this 15th day
of November, 1956.

/s/ L. C. STOCK,
Municipal Magistrate.

Bail Set

\$100.00 L.C.S. s/s

Received December 29, 1956.

[Endorsed]: Filed December 31, 1956.

In the Municipal Magistrate's Court for the
City of Palmer, Territory of Alaska

No. 111

CITY OF PALMER,

Plaintiff,

vs.

ALFRED HAGEN,

Defendant.

PLEA AND MOTION FOR CONTINUANCE

The defendant herein enters his plea of "Not
Guilty" and moves for a continuance of the date of

trial on the ground that his attorney is and will be engaged in the trial of other cases until on or after December 3, 1956.

/s/ ALFRED V. HAGEN.

Motion Granted. Date of Trial set for December 4, 1956.

/s/ L. C. STOCK.

[Title of Cause.]

MOTION TO DISQUALIFY MAGISTRATE

The defendant above named, by Edgar Paul Boyko, his attorney, respectfully moves that the Municipal Magistrate herein, Mr. L. C. Stock, disqualify himself for the following reasons:

1. This is a case involving an alleged violation of Palmer Ordinance No. 40, the sales tax ordinance.

2. The alleged violation has to do with the collection of such tax.

3. The said L. C. Stock is also the City Clerk of the City of Palmer who is charged with the responsibility for making sales tax collections.

4. It would be improper for the person responsible for and interested in the collection of such tax to attempt to sit in impartial judgment over a person alleged to have violated the rules pertaining to such collection.

/s/ EDGAR PAUL BOYKO,
Attorney for Defendant.

Motion Denied.

/s/ L. C. STOCK.

In the Municipal Court, City of Palmer,
Territory of Alaska

No. 111

THE CITY OF PALMER, a Municipal Corpora-
tion,

Plaintiff,

vs.

A. V. HAGEN, d/b/a VALLEY THEATRE,

Defendant.

CITY OF PALMER,

Plaintiff,

vs.

ALFRED HAGEN,

Defendant.

MOTION TO QUASH WARRANTS OF
ARREST AND DISMISS COMPLAINTS

The defendant above named by Edgar Paul Boyko, his attorney, moves to quash the warrants of arrest issued herein and to dismiss the complaints and each of them on the ground that Ordinance No. 40 of the City of Palmer is invalid as being without sanction of Territorial Law and therefore this Court lacks jurisdiction.

/s/ EDGAR PAUL BOYKO,

Attorney for Defendant.

Motion Denied.

/s/ L. C. STOCK.

Certificate of service attached.

[Title of District Court and Cause.]

No. 3582—Cr.

M. O. SETTING CAUSE FOR TRIAL

Before: The Honorable J. L. McCarrey, Jr.,
District Judge.

Now, at this time upon the Court's motion,

It Is Ordered that above cause be, and it is hereby,
set for trial at 10:00 o'clock a.m., Monday, October
21, 1957, to follow 3575—Cr.

Entered October 3, 1957.

[Title of District Court and Cause.]

No. 3582—Cr.

M. O. OF CONTINUANCE

Before: The Honorable J. L. McCarrey, Jr.,
District Judge.

Plaintiff represented by John Shaw; defendant
not present but represented by Charles Tulin of
counsel. Charles Tulin for and in behalf of defend-
ant moved Court that trial be continued for the rea-
son it was formerly his partner's case and he is un-
familiar with it and would like time to talk to his
client. John Shaw for and in behalf of the City of
Palmer concurs.

Motion granted and trial continued to 10:00 o'clock a.m. of Wednesday, October 23, 1957.

Entered October 21, 1957.

[Title of District Court and Cause.]

No. 3582—Cr.

TRIAL BY COURT

Before: The Honorable J. L. McCarrey, Jr.,
District Judge.

Now, at this time the above cause came on regularly for trial; City of Palmer represented by John Shaw; defendant present and represented by Charles Tulin, of counsel; the following proceedings were had, to wit:

Respective counsel stipulate as to certain facts orally and Court directs counsel to prepare and submit written stipulation accordingly.

After stipulation there remains only a question of law to be determined.

Charles Tulin for and in behalf of defendant moves the Court for a Judgment of Acquittal for the reason the sales tax is void.

Decision reserved.

Counsel for defendant is directed to file a brief within 10 days—counsel for plaintiff to file answer—

ing brief 10 days thereafter and counsel for defendant to file reply brief 5 days thereafter.

Entered October 23, 1957.

[Title of Cause.]

NOTATION ON DOCKET

Date Complaint Filed: November 15, 1956.

Date Arraigned: November 15, 1956.

Trial Date: November 21, 1956.

Sentence: Request granted to postpone trial until
December 4, 1956.

/s/ L. C. STOCK,
City Magistrate.

Notation on Docket

Date Complaint Filed: November 15, 1956.

Date Arranged: November 15, 1956.

Trial Date: December 4, 1956.

Sentence: \$50.00 Fine.

Witnesses Sworn: Bernard R. Bouwens, Louise
Loberg.

Defense Attorney: Edgar Paul Boyko.

Motions by Defense:

To Quash; Motion Denied.

To Disqualify City Magistrate; Motion Denied.

Appeal Bond: \$100.00.

[Seal] /s/ L. C. STOCK,
City Magistrate.

[Endorsed]: Filed October 23, 1957.

In the District Court for the District of Alaska,
Third Division
No. 3582—Cr.

CITY OF PALMER.

Plaintiff,

VS.

ALFRED HAGEN,

Defendant.

MOTION FOR A JUDGMENT OF ACQUITTAL

Comes now the above-named Defendant, by and through his counsel Charles E. Tulin and moves this Honorable Court for a Judgment of Acquittal, pursuant to Rule 29 of the Federal Rules of Criminal Procedure, on the grounds that the Palmer sales tax ordinance No. 10, as amended by sales tax ordinance No. 40, under which ordinance the Defendant has

been convicted, was passed without enabling legislation, and without sanction of law, and is therefore void.

Dated at Anchorage, Alaska, this 31st day of October, 1957.

/s/ CHARLES E. TULIN,
Attorney for Defendant.

Received and filed October 31, 1957.

[Title of District Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties, in order to facilitate the hearing of the case, save time for the Court and avoid the calling of witnesses and presentation of evidence, as follows:

1. That Ordinances Nos. 10, 40 and 48 attached hereto and made a part hereof by reference are duly enacted and official ordinances of the City of Palmer.
2. That the defendant collected sales tax from the public, in the usual course of his business, during the month of August, 1956, in accordance with the requirements of Ordinance No. 40.
3. That the defendant failed to make timely filing of his sales tax return as charged in the complaint.
4. That the defendant was arrested, released on his own recognizance, tried before the City Magistrate of the City of Palmer on December 4, 1956;

found guilty; sentenced to pay a fine of \$50; filed timely notice of appeal and posted his undertaking for bail on appeal in the amount of \$100.00.

5. That the defendant has heretofore filed said return and surrendered said tax monies for the said month of August, 1946.

6. That the defendant was a member of the City Council of the City of Palmer at the times Ordinances Nos. 10 and 40 were enacted; that he supported and voted for the enactments of the same; that he served as mayor of said City from October of 1952, until October of 1953; that by virtue of such offices he was charged with the duty of enforcing said ordinances during his term thereof, and that he was a member of the City Council of said City in August and September of 1956, at the times alleged in the complaint herein.

7. That the defendant was previously and on February 16, 1955, convicted of his first offense upon like facts under said Ordinance No. 40, but that this fact (No. 7) is not submitted for use of the Court in determining the guilt or innocence of the defendant in this case, but only for the purpose of passing sentence in the event the Court should find the defendant guilty.

Dated at Anchorage, Alaska, this 5th day of November, 1957.

BOYKO, TALBOT AND TULIN,

By /s/ CHARLES E. TULIN,

Attorneys for the Defendant.

JOHN D. SHAW,
City Attorney for the
City of Palmer;

WILLIAM T. PLUMMER,
United States Attorney,
Third Division;

By /s/ JOHN D. SHAW,
Attorneys for the Plaintiff.

Ordinance No. 40

An Ordinance to Provide for the Levying and Collection of a Consumer Two (2) Per Centum Sales Tax on Retail Sales and Services Made Within the City of Palmer, Alaska. The Proceeds to Be Used for General Purposes Relating to Services, Health and Welfare of the City and in Administration of the City Government: Providing for Administering, and Method of Collecting Said Tax: Providing Penalties: Fixing the Date When Such Ordinance and Tax Shall Become Effective, and Repealing Ordinance No. 10.

Whereas, more than fifty-five (55) per centum of the qualified voters voting at a special election held July 10, 1951, have consented to the levying and collection of a consumer's sales and service tax not to exceed two (2%) per centum of the sales prices on all retail sales and services made within the City of Palmer, Alaska, pursuant to Section 16-1-35,

ACLA 1949, as amended by House Bill No. 65 of the 19th session of the Legislature of the Territory of Alaska.

Now Therefore Be It Ordained by the Common Council of the City of Palmer, Alaska:

Section 1. "Retail Sale" shall be construed to mean the transfer of title to tangible personal property for consumption or use, and not for resale in substantially the same form or condition. A sale made to a purchaser for his own use, or to be consumed by him in fabricating an article for subsequent sale to another shall be deemed a retail sale.

"Services" shall be construed to mean the rendering of any personal service, professional and otherwise, to or for another's use or benefit, for money or other valuable consideration save and excepting remuneration for services shall not be construed to mean salaries and wages received by an employee.

"Consumer" shall be construed to mean the person who receives the use or benefit of personal property purchased or services rendered.

The term "selling price" shall be construed to mean the overall consideration, whether money, credit, right or other property expressed in the terms of money, paid or delivered by a buyer to a seller, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued, and without any deduction on account of losses.

The term "seller" shall be construed to mean every person, firm or corporation making sales at retail to a buyer or consumer, whether as agent, broker or principal; and the term shall include performing services for remuneration.

The term "wholesale sale" shall be construed to mean the sale of goods or articles to another for resale in the same form purchased.

"Sales of articles to contractors and sub-contractors," for use in the performance of labor or services for another shall not be deemed a sale to a consumer. In such cases the prime contractor shall collect the tax from the consumer or person receiving the benefit of the prime contractor's labor or services, which tax shall be based upon the price charged for the prime contractor's overall services, including the cost of labor and materials furnished by the prime contractor's sub-contractors.

"Mail order sales and sales made by personal solicitation." Sales to consumers made by mail-order houses or other sellers having a place of business within the municipality or having a place of business elsewhere, but who solicit sales with the municipality, are taxable, if the order is accepted with the municipality, and delivery is made by the seller at such place of business or elsewhere within the municipality.

Section 2. From and after the first day of January, 1954, there shall be levied and collected a tax on retail sales and services made within the city of

Palmer equal to two (2%) per centum of the selling price and/or charge made for the services rendered, when such selling price and/or charge made amounts to twenty-five (25) cents or more.

Section 3. The tax levied hereunder shall apply to the following sales and services:

- (a) All tangible personal property.
- (b) Natural or artificial gas, electricity, ice, steam, water, or any public service or public utility.
- (c) Transportation for hire of persons by common carrier, including motor transportation, taxicab companies and all other means of transportation for hire.
- (d) Service by telephone companies to subscribers or users, including transmission of messages, whether local or long distance. This shall include all services and rental charges having any connection with telephone service, but not include deposits.
- (e) Printing or printed matter of all types, kinds and characters and the service of printing or over printing.
- (f) The service of renting rooms or living quarters or offices or other commercial space of whatever name or nature by hotels, apartments, rooming houses, public lodging houses or by firms or individuals rent single or multiple unit residences or offices or other commercial space.
- (g) Foods, confections and all drinks sold and dispensed by hotels, restaurants, or other dispensers

and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere.

(h) Advertising of all kinds, types and character contracted for or sold in Palmer, including any and all devices used for advertising purposes and the servicing of advertising devices.

(i) Gross proceeds derived from the operation of punch boards, slot machines, marble machines, juke boxes, merchandise vending machines or amusement devices of any kind.

(j) The sale of tickets or admissions to places of amusement, entertainment, recreational or athletic events, or dues or fees for the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities, including free or complimentary passes and tickets, dues or fees are hereby declared to have a value equivalent to the sale price or value of said tickets, passes, admissions, fees or dues.

(k) For the purpose of this Ordinance, sales and services of tangible personal property made for the purpose of developing and improving real estate, even though such real estate is intended for resale as real property, are hereby declared to be sales to consumers or users. Sales and/or services of tangible personal property, including materials, supplies and equipment made to contractors who use same in the performance of any contract, are hereby declared not to be sales to consumers or users. Sales of tangible

personal property to persons who are primarily engaged in selling their services shall be deemed sales to consumers or users and therefore taxable.

(1) Services of dry cleaners, laundries, garages, barber and beauty shops, cold storage and locker plants.

(m) Other service falling within the meaning as defined in Section 1, and not specifically excluded by Section 4.

(n) Retail sales of motor fuels.

Section 4. The tax hereby levied shall not apply to the following:

(a) Casual and isolated sales not exceeding fifty (\$50.00) dollars and not made in the regular course of business.

(b) Sales of insurance and bonds of guaranty and fidelity.

(c) Gross receipts or proceeds derived from funeral charges and services, medical or dental services rendered, and hospital services.

(d) Gross receipts or gross proceeds derived from the transportation of students to and from grade or high schools in motor or other vehicles.

(e) Gross receipts or gross proceeds derived from the sale of tangible personal property or services by churches, except where such organizations are engaged in business for profit or savings, or com-

peting with other persons engaged in the same or similar business.

(f) Gross receipts or proceeds derived from the sale of food in public, common, high school or college cafeterias or lunch rooms operated primarily for the public and not operated for profit.

(g) Gross receipts or proceeds derived from carrier sales made directly to consumers or users of newspapers or any other periodicals.

(h) Gross receipts or proceeds derived from sales or services which the municipality is prohibited from taxing under the laws of the Territory of Alaska, or under the laws of the United States; or gross receipts or proceeds from the transportation, loading, unloading or storing of cargo from vessels or aircraft in foreign or interstate commerce, or on goods in transit or awaiting and being processed for shipment.

(i) Gross receipts or proceeds derived from sales to the United States Government, Territory of Alaska, any political subdivision thereof, or the City of Palmer, Alaska.

(j) Dues or fees to clubs, labor unions or fraternal organizations.

(k) Real estate agent's gross receipts received on behalf of owner and derived from sale of real property, but excepting the real estate agent's fee earned as commission for sale of such property, which fee or commission shall be taxable.

(l) Sales of tickets for school entertainments, school athletic events, and activities conducted for eleemosynary purposes or community benefits.

(m) Bulk sales of feed, seed and fertilizer to farmers.

(n) Interstate air, train and boat fares.

(o) Receipts from the filling of Doctor's prescriptions by licensed pharmaceulics.

(p) Sales of drugs and medicines for use in hospitals and clinics.

(q) Sales of food supplies to cafes, restaurants and other establishment where food is sold to the public for use in the normal course of business of cafes and restaurants and such other establishments.

(r) Sales of food supplies to hospitals, to children's homes having 6 or more charges, recreational camps and schools shall be exempt provided a certificate authorizing such exemption is first obtained from the City.

Section 5. The maximum tax on contract construction of buildings or residences on any single piece of machinery or equipment such as a car, or a boat or an engine shall be ten (\$10.00) dollars; and, even though the single sale of one article may run to several thousands of dollars, only the first five hundred (\$500.00) dollars shall be subject to tax under the terms and provisions of this Ordinance. It is specifically proved, however, that sales of supplies, ice, or oil or gas, or equipment, individually or in

the aggregate, shall not be construed as falling in the exempted class, nor shall the total sales price of any combination of items of merchandise, machinery, equipment or goods, wares or merchandise, be considered as a single sale for the purpose of securing the exemption provided for by this Section.

And for the purpose of facilitating the collection of the tax and for the convenience of the consumer, the following special application of this regulation shall prevail:

(a) The consumer who proposes to construct a building or buildings within the City of Palmer may, at the time of making application for and receiving the building permit, pay the maximum tax required under this Ordinance; and the subsequent showing of the tax receipt then issued shall exempt said consumer for a period not to exceed one year, from paying any further tax in purchasing for the project for which the permit has been issued; showing of such receipt, which shall not be transferable, at the time of the purchase of goods, materials or articles will be sufficient to permit the purchase of the goods, materials or articles without further payment of tax and will relieve the merchant or seller from the obligation to collect the tax, as in Section 7 provided.

(b) In the event that the building or buildings for the project is to be erected outside of the City of Palmer, the consumer may pay the tax to the City Clerk and receive a receipt which shall be considered by the merchant or seller as *prima facie*

evidence of the previous payment of such tax for any purchase for the particular project described on the tax receipt; showing of such receipt at the time of the purchase of goods, materials or articles without further payment of tax and will relieve the merchant or seller from the obligation to collect the tax, as in Section 7 provided.

(c) In the event that any other single project, other than those buildings or construction for which a building permit would be required, is contemplated, requiring miscellaneous purchasing from more than one seller, the consumer may, in order to avoid the payment of multiple taxes, obtain from the city clerk a receipt showing the maximum payment of the tax and the description of the project; the showing of such receipt at the time of the purchase of goods, materials or articles will be sufficient to permit the purchase of the goods, materials or articles without further payment of the tax and will relieve the merchant or seller from the obligation to collect the tax, as in Section 7 provided.

Section 6. Every seller making the retail sales and every person performing services, on or before the tenth (10th) day of each month shall make out a return for the preceding month upon forms to be provided by the City Clerk, setting forth the amount of all sales and services, all non-taxable sales and services, and all taxable sales and services for the preceding month, the amount of the tax thereon, and such other information as the city clerk may require, and sign and transmit the same to the City Clerk.

The tax levied under this Ordinance, whether or not collected from the buyer, shall be paid by the seller and/or person performing services, to the city clerk in monthly installments at the time of transmitting the return and, if not so paid, such tax shall forthwith become delinquent. In the event the tax is not paid before delinquency, as herein provided a penalty of five (5%) per centum of such tax shall be added to the tax for the first month or fraction thereof of delinquency, and an additional five (5%) per centum for each additional month or fraction thereof of delinquency until a total penalty of fifteen (15%) per centum has accrued. Such penalty shall be assessed and collected in the same manner as the tax is assessed and collected. In addition to the aforesaid penalty, interest at the rate of six (6%) per centum per annum on the delinquent tax from the date of delinquency until paid shall accrue and be collected in the same manner the delinquent tax is collected.

Such returns shall show such further information as the city clerk may require to enable him to compute correctly and collect the tax herein levied. In addition to the information required on returns, the city clerk may request and the taxpayer must furnish any information deemed necessary for a correct computation of the tax. Such taxpayer shall compute and remit to the city clerk the required tax due for the preceding months and the remittance or remittances of the tax must accompany the returns herein required. If not paid on or before the last day of each month, the tax shall be delinquent from such

date, and collection shall be enforced under the terms of this Ordinance as set forth in Sections 7 & 9.

It shall be the duty of every taxpayer required to make a return and pay any tax under this Ordinance, to keep and preserve suitable records of the gross daily sales together with invoices of purchases and sales, bills of lading, bills of sale and other pertinent records and documents which may be necessary to determine the amount of tax due hereunder and such other records of goods, wares, merchandise and other subjects of taxation under this Ordinance as will substantiate and prove the accuracy of such returns. It shall also be the duty of every person who makes sales for resale to keep records of such sales which shall be subject to examination by the city clerk or any authorized employee thereof while engaged in checking or auditing the records of any taxpayer required to make a report under the terms of this Ordinance.

All such records shall remain in the City of Palmer and be preserved for a period of three years (3), unless the city clerk in writing has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the city clerk or any authorized employee thereof while engaged in checking such records. The burden of proving that a sale was not a taxable sale shall be upon the person making the sale.

Section 7. The tax levied hereunder shall be paid by the consumer or user of the seller, and it shall be the duty of each and every seller of the City of

Palmer to collect from the consumer or user, the full amount of the tax imposed by this Ordinance, except that the tax on receipts or proceeds from the various mechanical devices as stipulated in Paragraph (i), Section 3, shall be paid by the owner and/or operator thereof.

Sellers shall add the tax imposed under this Ordinance or the average equivalent thereof, to the sales price or charge, and when so added such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the vendor until paid, and shall be recoverable at law in the same manner as other debts. Performers and/or sellers of services shall be considered sellers of the purpose of this Section.

Sellers shall add this tax to the sale price or service charge in strict accordance with the following scale.

Charge	Tax
Under 25c	none
25c thru 64c.....	.01
65c thru 1.24.....	.02
1.25 thru 1.64.....	.03
1.65 thru 2.24.....	.04
2.25 thru 2.64.....	.05
2.65 thru 3.24.....	.06
3.25 thru 3.64.....	.07
3.65 thru 4.24.....	.08
4.25 thru 4.64.....	.09
4.65 thru 5.24.....	.10

Over \$5.24 continue on same scale.

Section 8. All monies accumulated under the terms of this Ordinance shall be deposited by the city clerk with the Palmer Bank or such other bank as the Common Council of the City of Palmer, Alaska shall determine in an account title General Purpose Fund, City of Palmer and no part of these funds may be diverted to any use other than herein stipulated. Expenditures from these funds may be made at the discretion and only by the order of the Common Council for the uses stipulated.

Section 9. A seller who wilfully or intentionally fails, neglects or refuses to collect the full amount of the tax imposed by this Ordinance, or wilfully or intentionally fails, neglects or refuses to comply with the provisions of this Ordinance, or permits or rebates to a consumer or user, either directly or indirectly and by whatsoever means, all or any part of the tax levied by this Ordinance, or makes in any form of advertising, verbally or otherwise, any statement which infers that he is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than twenty-five (25.00) dollars, and upon conviction for a second or other subsequent offense, shall be fined not more than one hundred (\$100.00) dollars, or imprisoned in the City Jail for not more than thirty (30) days, or both such fine and imprisonment.

Any person, firm, copartnership or corporation violating any of the provisions of this ordinance

shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five (25) dollars or more than one hundred (100) dollars; and upon conviction of a second or subsequent offense shall be fined not more than one hundred (100) dollars or imprisoned in the City Jail not more than thirty (30) days or both such fine and imprisonment in the discretion of the City Magistrate, and shall pay the costs of prosecution.

Section 10. If any section, subsection, clause, sentence, or phrase of this Ordinance is held to be invalid, the decision shall not affect the validity or the meaning of the remaining portions of this Ordinance. The Common Council of the City declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 11. Ordinance No. 10 is hereby repealed as of the time when this ordinance takes effect.

This Ordinance shall be in full force and effect and Ordinance No. 10 is repealed from and after 12:01 a.m. the 1st day of January, 1954.

First Reading: December 1, 1953.

Second Reading: December 15, 1953.

Third Reading: December 22, 1953.

Passed and approved this 22nd day of December,
1953.

/s/ DON McKECHNIE,
Mayor, City of Palmer.

Attest:

/s/ ELIZABETH BARRY,
City Clerk.

I hereby certify that this is a true and correct
copy of Ordinance No. 40.

[Seal] /s/ L. C. STOCK,
City Clerk.

City of Palmer, Alaska
Ordinance No. 48

An Ordinance Amending All Ordinances of the
City of Palmer From No. 1 to and Including
No. 47, Wherein Penalties Are Provided, to
Provide Penalties Where Now No Penalties
Are Provided and to Increase the Maximum
Fine From \$100.00 to \$300.00 Upon Convic-
tion for the Violation of Any City Ordinance
or Rule or Regulation Adopted or Issued Pur-
suant to Such Ordinance.

Be It Ordained by the City Council of the City
of Palmer, Alaska: That wherever in Ordinances
No. 1 through No. 47, inclusive, the City of Palmer,
Alaska, a maximum punishment by fine of \$100.00
is provided, the same is hereby amended to read
"\$300.00."

That wherever any rule or regulation adopted or issued pursuant to any ordinance of the City of Palmer provides for a maximum fine of \$100.00 for violation thereof, the same be and hereby is amended to read "\$300.00."

That wherever any ordinance of the City of Palmer or any rule or regulation adopted pursuant thereto declares an act or acts to be unlawful without providing a penalty, the maximum penalty for the violation of the same shall be a fine of \$300.00 and imprisonment in the City Jail not more than 30 days or both such fine and imprisonment.

All other provisions of ordinances of the City of Palmer, Nos. 1 through 47, or any amendments thereof providing penalties for violations thereof, except as herein amended, shall remain in full force and effect.

An emergency having been declared, and the rules governing the introduction and passage of ordinances having been suspended, this ordinance hereby is passed by the City Council of the City of Palmer, Alaska, this 1st day of June, 1954.

/s/ BETTY MEARS,
Acting Mayor.

Attest:

/s/ ELIZABETH BARRY,
City Clerk.

City of Palmer, Alaska

Ordinance No. 10

An Ordinance to Provide for the Levying and Collection of a Consumers Two (2) Per Centum Sales Tax on Retail Sales and Services Made Within the City of Palmer, Alaska. The Proceeds to Be Used for General Purposes Relating to Services, Health, and Welfare of the City and in Administration of the City Government, Providing for Administering, and Method of Collecting Said Tax; Providing Penalties; and Fixing the Date When Such Ordinance and Tax Shall Become Effective.

Whereas, more than fifty-five (55) per centum of the qualified voters voting at a special election held July 10, 1951, have consented to the levying and collection of a consumer's sales and service tax not to exceed two (2%) per centum of the sales prices on all retail sales and services made within the city of Palmer, Alaska, pursuant to Section 16-1-35, ACLA 1949 so amended by House Bill No. 65 of the 19th Session of the Legislature of the Territory of Alaska.

Now Therefore Be It Ordained by the Common Council of the City of Palmer, Alaska:

Section 1. "Retail Sale" shall be construed to mean the transfer of title to tangible personal property for consumption or use, and not for resale in substantially the same form or condition. A

sale made to a purchaser for his own use, or to be consumed by him in fabricating an article for subsequent sale to another shall be deemed a retail sale.

“Services” shall be construed to mean the rendering of any personal service, professional and otherwise, to or for another’s use or benefit, for money or other valuable consideration save and excepting remuneration for services shall not be construed to mean salaries and wages received by an employee.

“Consumer” shall be construed to mean the person who receives the use or benefit of personal property purchased or services rendered.

The term “selling price” shall be construed to mean the overall consideration, whether money, credit, rights, or other property expressed in the terms of money, paid or delivered by a buyer to a seller, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued, and without any deduction on account of losses.

The term “seller” shall be construed to mean every person, firm or corporation making sales at retail to a buyer or consumer, whether an agent, broker or principal; and the term shall include persons performing services for remuneration.

The term "wholesale sale" shall be construed to mean the sale of goods or articles to another for resale in the same form purchased.

"Sales of articles to contractors and subcontractors," for use in the performance of labor or services for another shall not be deemed a sale to a consumer. In such cases the prime contractor shall collect the tax from the consumer or person receiving the benefit of the prime contractor's labor or services, which tax shall be based upon the price charged for the prime contractor's overall services, including the cost of labor and materials furnished by the prime contractor's subcontractors.

"Mail order sales." Sales to consumers made by mail order houses or other seller having a place of business within the municipality are taxable, if the order is accepted within the municipality, and delivery is made by the seller at such place of business or elsewhere within the municipality.

Section 2. From and after the first day of September, 1951, or at a later date to be set by the Common Council of the City, there shall be levied and collected a tax on retail sales and services made within the City of Palmer equal to two (2%) per centum of the selling price and/or charge made for the services rendered, when such selling price and/or charge made amounts to thirty-five cents or more.

Section 3. The tax levied hereunder shall apply to the following sales and services:

- (a) All tangible personal property.

(b) Natural or artificial gas, electricity, ice, steam, water, or any public service or public utility.

(c) Transportation for hire of persons by common carrier, including motor transportation, taxicab companies and all other means of transportation for hire.

(d) Service by telephone companies to subscribers or users, including transmission of messages, whether local or long distance. This shall include all services and rental charges having any connection with telephone service.

(e) Printing or printed matter of all types, kinds and characters and the service of printing or over printing.

(f) The service of renting rooms or living quarters or offices or other commercial space of whatever name or nature by hotels, apartments, rooming houses, public lodging houses or by firms or individuals renting single or multiple unit residences or offices or other commercial space.

(g) Foods, confections and all drinks sold and dispensed by hotels, restaurants, or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere.

(h) Advertising of all kinds, types and characters originating in Palmer or adjacent areas, including any and all devices used for advertising purposes and the servicing of advertising devices.

(i) Gross proceeds derived from the operation of punch boards, slot machines, marble machines, juke boxes, merchandise vending machines, or amusement devices of any kind.

(j) The sale of tickets or admissions to places of amusement, entertainment, recreational or athletic events, or dues or fees for the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities, including free or complimentary passes and tickets, admissions, dues or fees. Such fee or complimentary passes and tickets, dues or fees are hereby declared to have a value equivalent to the sale price or value of said tickets, passes, admissions, fees, or dues.

(k) For the purpose of this Ordinance, sales and services of tangible personal property made for the purpose of developing and improving real estate even though such real estate is intended for resale as real property, are hereby declared to be sales to consumers or users. Sales and/or services of tangible personal property, including materials, supplies and equipment made to contractors who use same in the performance of any contract, are hereby declared not to be sales to consumers or users. Sales of tangible personal property to persons who are primarily engaged in selling their services shall be deemed sales to consumers or users and therefore taxable.

(1) Services of dry cleaners, laundries, garages, barber and beauty shops, cold storage and locker plants.

(m) Other services falling within the meaning as defined in Section 1, and not specifically excluded by Section 4.

Section 4. The tax hereby levied shall not apply to the following:

(a) Retail sales and for remuneration for services amounting to less than \$50.00 in any calendar month.

(b) Casual and isolated sales not made in the regular course of business.

(c) Sales of insurance and bonds of guaranty and fidelity.

(d) Gross receipts or proceeds derived from funeral charges and services, medical or dental services rendered, and hospital services.

(e) Gross receipts or gross proceeds derived from the sale of tangible personal property or services by churches, except where such organizations are engaged in business for profit or savings, or competing with other persons engaged in the same or similar business.

(f) Gross receipts or proceeds derived from the transportation of students to and from grade or high schools in motor or other vehicles.

(g) Gross receipts or proceeds derived from the sale of food in public, common, high school or college cafeterias or lunch rooms operated primarily for teachers and pupils, and not operated primarily for the public and not operated for profit.

(h) Gross receipts or proceeds derived from carrier sales made directly to consumers or users of newspapers or any other periodicals.

(i) Gross receipts or proceeds derived from sales or services which the municipality is prohibited from taxing under the laws of the Territory of Alaska, or under the laws of the United States; or gross receipts or proceeds from the transportation, loading, unloading, or storing of cargo from vessels or aircraft in foreign or interstate commerce, or on goods in transit or awaiting and being processed for shipment.

(j) Gross receipts or proceeds derived from sales to the United States Government, Territory of Alaska, any political subdivision thereof, or the City of Palmer, Alaska.

(k) Dues or fees to clubs, labor unions, or fraternal organizations.

(l) Gross receipts derived from the sale of real property; excepting the gross receipts earned as commissions by agents shall be taxable.

(m) Sales of tickets for school entertainments, school athletic events, and activities conducted for eleemosynary purposes or community benefits.

(n) Bulk sales of feed, seed and fertilizer to farmers.

(o) Interstate air, train, and boat fares.

Section 5. The maximum tax on the sale of real estate, contract construction of buildings or resi-

dences or any single piece of machinery or equipment such as a car, a boat, or an engine, shall be ten (\$10.00) dollars; and, even though the single sale of one article may run to several thousands of dollars, only the first five hundred (\$500.00) dollars shall be subject to tax under the terms and provisions of this Ordinance. It is specifically provided, however, that sales of supplies, ice, or oil or gas, or equipment, individually or in the aggregate, shall not be construed as falling in the exempted class, nor shall the total sales price of any combination of items of merchandise, machinery, equipment, or goods, wares or merchandize, be considered as a single sale for the purpose of securing the exemption provided for by this Section.

Section 6. Every seller making the retail sales and every person performing services, on or before the tenth day of each month shall make out a return for the preceding month upon forms to be provided by the City Clerk, setting forth the amount of all sales and services, all nontaxable sales and services, and all taxable sales and services for the preceding month, the amount of the tax thereon, and such other information as the City Clerk may require, and sign and transmit the same to the City Clerk. The tax levied under this Ordinance, whether or not collected from the buyer, shall be paid by the seller and/or person performing services, to the City Clerk in monthly installments at the time of transmitting the return, and if not so paid such tax shall forthwith become de-

linquent. In the event the tax is not paid before delinquency as herein provided a penalty of five (5%) per centum of such tax shall be added to the tax for the first month or fraction thereof of delinquency, and an additional five (5%) per centum for each additional month or fraction thereof of delinquency until a total penalty of fifteen (15%) per centum has accrued. Such penalty shall be assessed and collected in the same manner as the tax is assessed and collected. In addition to the aforesaid penalty, interest at the rate of six (6%) per centum per annum on the delinquent tax from the date of delinquency until paid shall accrue and be collected in the same manner the delinquent tax is collected.

Such returns shall show such further information as the City Clerk may require to enable him to compute correctly and collect the tax herein levied. In addition to the information required on returns, the City Clerk may request and the taxpayer must furnish any information deemed necessary for a correct computation of the tax. Such taxpayer shall compute and remit to the City Clerk the required tax due for the preceding month and the remittance or remittances of the tax must accompany the returns herein required. If not paid on or before the last day of each month immediately following the close of each quarter the tax shall be delinquent from such date, and collection will be enforced under the terms of this Ordinance as set forth in Sections 7 and 9.

It shall be the duty of every taxpayer required to make a return and pay any tax under this Ordinance, to keep and preserve suitable records of the gross daily sales together with invoices of purchases and sales, bills of lading, bills of sale and other pertinent records and documents which may be necessary to determine the amount of tax due hereunder and such other records of goods, wares, merchandise and other subjects of taxation under this Ordinance as will substantiate and prove the accuracy of such returns. It shall also be the duty of every person who makes sales for resale to keep records of such sales which shall be subject to examination by the City Clerk or any authorized employee thereof while engaged in checking or auditing the records of any taxpayer required to make a report under the terms of this Ordinance.

All such records shall remain in the City of Palmer and be preserved for a period of three (3) years, unless the City Clerk in writing has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the City Clerk or any authorized employee thereof while engaged in checking such records. The burden of proving that a sale was not a taxable sale shall be upon the persons making the sale.

Section 7. The tax levied hereunder shall be paid by the consumer or user to the seller, and it shall be the duty of each and every seller of the City of Palmer to collect from the consumer or user, the full amount of the tax imposed by this

Ordinance, except that the tax on receipts or proceeds from the various mechanical devices as stipulated in Paragraph (i), Section 3, shall be paid by the owner and/or operator thereof.

Sellers shall add the tax imposed under this Ordinance or the average equivalent thereof, to the sales price or charge, and when so added such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the vendor until paid, and shall be recoverable at law in the same manner as other debts. Performers and/or sellers of services shall be considered sellers for the purpose of this Section.

Sellers shall add this tax to the sale price or service charge in strict accordance with the following scale:

Charge	Tax
Under \$.34	None
\$.35 through \$.64.....	\$.01
.65 through 1.34.....	.02
1.35 through 1.64.....	.03
1.65 through 2.34.....	.04
2.35 through 2.64.....	.05
2.65 through 3.34.....	.06
3.35 through 3.64.....	.07
3.65 through 4.34.....	.08
4.35 through 4.64.....	.09
Over \$5.34 continue on same scale.	

Section 8. All monies accumulated under the terms of this Ordinance shall be deposited by the

City Clerk with the Palmer Bank or such other bank as the Common Council of the City of Palmer, Alaska, shall determine in an account titled General Purpose Fund, City of Palmer and no part of these funds may be diverted to any use other than herein stipulated. Expenditures from these funds may be made at the discretion and only by the order of the Common Council for the uses stipulated.

Section 9. A seller who wilfully or intentionally fails, neglects or refuses to collect the full amount of the tax imposed by this Ordinance, or wilfully or intentionally fails, neglects or refuses to comply with the provisions of this Ordinance, or remits or rebates to a consumer or user, either directly or indirectly and by whatsoever means, all or any part of the tax levied by this Ordinance, or makes in any form of advertising, verbally or otherwise, any statement which infers that he is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than twenty-five (\$25.00) dollars, and upon conviction for a second or other subsequent offense, shall be fined not more than one hundred (\$100.00) dollars, or imprisoned in the City Jail for not more than thirty (30) days, or both such fine and imprisonment.

Any person, firm, co-partnership or corporation violating any of the provisions of this ordinance

shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five (\$25.00) dollars or more than one hundred (\$100.00) dollars; and upon conviction of a second or subsequent offense shall be fined not more than one hundred (\$100.00) dollars or imprisoned in the City Jail not more than thirty (30) days or both such fine and imprisonment in the discretion of the City Magistrate, and shall pay the costs of prosecution.

Section 19. If any section, subsection, clause, sentence, or phrase of this Ordinance is held to be invalid, the decision shall not affect the validity or the meaning of the remaining portions of this Ordinance. The Common Council of the City declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

This Ordinance shall be in full force and effect from and after the first day of September, 1951.

Passed and approved this 5th day of August, 1951.

CARL H. MEIER,

Mayor.

Attest:

WILLIAM HEAD,

City Clerk.

[Endorsed]: Filed November 5, 1951.

[Title of District Court and Cause.]

No. 3582—Cr.

HEARING ON MOTION FOR JUDGMENT OF ACQUITTAL

Before: The Honorable J. L. McCarrey, Jr., District Judge.

Now, at this time hearing on motion for Judgment of Acquittal in the above cause, came on regularly before the court, plaintiff represented by John Shaw, attorney for City of Palmer; defendant represented by Charles Tulin, of counsel. The following proceedings were had, to-wit:

Argument to the Court was had by Charles Tulin, for and in behalf of the defendant.

Argument to the Court was had by John Shaw, for and in behalf of the City of Palmer.

Argument to the Court was had by Charles Tulin, for and in behalf of the defendant.

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Argument to the Court was had by Charles Tulin, for and in behalf of the defendant.

Argument to the Court was had by John Shaw, for and in behalf of the City of Palmer.

Whereupon, the Court having heard the arguments of respective counsel and being fully and duly advised in the premises, announced it would reserve its decision.

Entered: November 15, 1957.

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
Territory of Alaska—ss.

Whereas, a hearing was held on the above-entitled matter on the 13th day of November, 1957, and

Whereas, some question arose as to whether or not the Defendant herein paid the taxes in issue under protest,

Comes now the above-named Defendant and being first duly sworn deposes and says:

1. That he has personal knowledge of the facts contained in this affidavit.

2. That when he paid the retail sales taxes herein he did so under verbal protest to the city clerk.

3. That this affidavit is submitted to clarify statements to this effect made by counsel for the Defendant at the time of the hearing on the 13th day of November, 1957.

/s/ ALFRED HAGEN.

Subscribed and Sworn to Before Me, this 22nd day of November, 1957.

[Seal] /s/ FERN E. TULIN,

Notary Public in and for
Alaska.

My commission expires 10/21/61.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 22, 1957.

[Title of District Court and Cause.]

MEMORANDUM OPINION

JOHN SHAW,
For Plaintiff.

EDGAR PAUL BOYKO,
For Defendant.

This is an appeal from the Municipal Court of the City of Palmer and is submitted upon the following stipulation.

“It is hereby stipulated and agreed by and between the parties, in order to facilitate the hearing of the case, save time for the Court and avoid the calling of witnesses and presentation of evidence, as follows:

“1. That Ordinances Nos. 10, 40 and 48 attached hereto and made a part hereof by reference are duly enacted and official ordinances of the City of Palmer.

“2. That the defendant collected sales tax from the public, in the usual course of his business, during the month of August, 1956, in accordance with the requirements of Ordinance No. 40.

“3. That the defendant failed to make timely filing of his sales tax return as charged in the complaint.

“4. That the defendant was arrested, released on his own recognizance, tried before the City Magistrate of the City of Palmer on December 4, 1956.

found guilty, sentenced to pay a fine of \$50, filed timely notice of appeal and posted his undertaking for bail on appeal in the amount of \$100.00.

“5. That the defendant has heretofore filed said return and surrendered said tax monies for the said month of August, 1956.

“6. That the defendant was a member of the City Council of the City of Palmer at the times Ordinances Nos. 10 and 40 were enacted, that he supported and voted for the enactments of the same, that he served as mayor of said City from October of 1952 until October of 1953, that by virtue of such offices he was charged with the duty of enforcing said ordinances during his term thereof, and that he was a member of the City Council of said City in August and September of 1956 at the times alleged in the complaint herein.

“7. That the defendant was previously and on February 16, 1955, convicted of his first offense upon like facts under said Ordinance No. 40, but that this fact (No. 7) is not submitted for use of the Court in determining the guilt or innocence of the defendant in this case, but only for the purpose of passing sentence in the event the Court should find the defendant guilty.

“Dated at Anchorage, Alaska, this 5th day of November, 1957.

“BOYKO, TALBOT AND
TULIN,

“By /s/ CHARLES E. TULIN,

“Attorneys for the Defendant.

“JOHN D. SHAW,

“City Attorney for the City
of Palmer;

“WILLIAM T. PLUMMER,

“United States Attorney,
Third Division;

“By /s/ JOHN D. SHAW,

“Attorneys for the
Plaintiff.”

The defendant has moved the court for a judgment of acquittal under the rules.

The sole issue to be determined by the court in this case is whether one who has collected taxes under a city ordinance authorized by territorial statute, can now refuse to pay said taxes to the taxing authority on the grounds that the law under which the taxes were collected was illegal or void.

I am of the opinion and hereby find that it is not necessary for the court to determine the validity of the original or amendatory statutes or the ordinances here in question, for the reason that the defendant collected said taxes in question and, therefore, now is precluded from challenging the constitutionality of such statutes. When the defendant collected the taxes he became the agent of the city of Palmer and as such is obligated to account to the city, as principal, for the amount thereof, and as a collector, he cannot now deny the right of his principal to receive such, on the ground

that the tax was illegally levied. This is a well established principle of the law. Mechem, *The Law of Agency*, Book IV, sec. 526 (1889); *Village of Olean v. King*, 22 N.E. 559 (1889). The same result is often justified on grounds of estoppel, *Collins v. Tillou*, 68 AM. Dec. 398 (1857), constructive trust or other equitable grounds, *Murdock v. Cincinnati*, 44 F. 726 (1891).

Motion for judgment of acquittal is hereby denied. Monday, January 6 at the hour of 4 p.m. is the time hereby set down for the imposition of sentence.

Dated at Anchorage, Alaska, this 31st day of December, 1957.

/s/ J. L. McCARREY, JR.,
U. S. District Judge.

[Endorsed]: Filed December 31, 1957.

[Title of District Court and Cause.]

M. O. PRONOUNCING SENTENCE

Before: The Honorable J. L. McCarrey, Jr.,
District Judge.

Now, came John Shaw, counsel for the City of Palmer, and also came William T. Plummer, United States Attorney, for and in behalf of the Government, came also the defendant, in person, and with Charles Tulin, of his counsel, and this being the time heretofore set for pronouncement of

sentence in the above cause, the following proceedings were had, to-wit:

Statement to the Court was had by John Shaw, for and in behalf of the plaintiff.

Statement to the Court was had by William T. Plummer, for and in behalf of the plaintiff.

Statement to the Court was had by Charles Tulin, for and in behalf of the defendant.

At this time Motion by Charles Tulin was renewed, for and in behalf of the defendant for a judgment of acquittal.

Statement to the Court was had by John Shaw, for and in behalf of the plaintiff.

Statement to the Court was had by William T. Plummer, for and in behalf of the plaintiff.

Motion Denied.

Statement to the Court was had by Alfred Hagen for and in his own behalf.

The Court now pronounces judgment of Thirty (30) days, Twenty-nine (29) days of said sentence to be suspended, said sentence to commence at 10:00 o'clock a.m. of Tuesday, January 7, 1958, in the Federal Jail at Anchorage, Alaska, and a fine of \$300.00, against said defendant and directs the Assistant United States Attorney or John Shaw, counsel for the City of Palmer, to prepare and submit written judgment and commitment in accordance with the oral judgment given herein, and defendant waives presence when formal judgment is entered.

Entered: January 6, 1958.

[Title of District Court and Cause.]

M O. SETTING AMOUNT OF
APPEAL BOND

Before: The Honorable J. L. McCarrey, Jr.,
District Judge.

Now at this time upon the motion of Charles Tulin, for and in behalf of the defendant, and William T. Plummer, United States Attorney, concurring,

It Is Ordered that the amount of the appeal bond in the above cause, be, and it is hereby, fixed in the amount of \$1,000.00.

[Entered]: January 7, 1958.

In the District Court for the District of Alaska,
Third Division

Criminal No. 3582

CITY OF PALMER, a Municipal Corporation,
Plaintiff,

vs.

ALFRED V. HAGEN,
Defendant.

JUDGMENT

On the day of December, 1957, came the attorney for the City of Palmer, John D. Shaw, and the defendant appeared personally and through his

attorney, Charles E. Tulin, and entered a plea of not guilty to the offense as charged;

Whereupon, counsel stipulating to the facts of the case, and no witnesses being called, and the court being fully advised in the premises and having heard the arguments of counsel on behalf of both parties, and having considered respective briefs and thereafter having denied the motion of the defendant for judgment of acquittal and the subsequent renewal thereof;

Now, Therefore, the judgment of the court is as follows:

It is adjudged that the defendant has been convicted of the offense as charged in the complaint.

It is adjudged that the defendant is guilty as charged.

It is adjudged that the defendant is hereby fined the sum of Three Hundred (\$300.00) Dollars and sentenced to thirty (30) days in jail, twenty-nine (29) days of which are hereby suspended, leaving the defendant one day in jail to serve beginning at 9:00 a.m., January 7, 1958.

It is further ordered that the defendant may pay the said Three Hundred (\$300.00) Dollars fine as follows: One Hundred (\$100.00) Dollars on January 7, 1958, and One Hundred (\$100.00) Dollars on the 7th of each month until the entire sum has been paid.

Dated at Anchorage, Alaska, this 7th day of January, 1958.

/s/ J. L. McCARREY, JR.,
District Judge.

Approved:

/s/ CHARLES E. TULIN,
Attorney for Defendant.

[Endorsed]: Filed and entered January 7, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: City of Palmer, Plaintiff above named, and to John D. Shaw, City of Palmer attorney, their attorney of record:

Notice is hereby given, that the Defendant herein, Alfred V. Hagen, hereby appeals to the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, from the Judgment rendered herein, which judgment was entered on the 7th day of January, 1958, and which Judgment is by reference made a part of this Notice of Appeal as fully as if set out herein.

Dated at Anchorage, Alaska, this 7th day of January, 1958.

BOYKO, TALBOT & TULIN,

By /s/ CHARLES E. TULIN,
Attorney for Defendant.

[Endorsed]: Filed January 7, 1958.

[Title of District Court and Cause.]

TRANSCRIPT OF EXCERPT
OF PROCEEDINGS

The Court: This was the time set down for the imposition of sentence in the case of City of Palmer, Plaintiff, vs. Alfred Hagen, Defendant, Criminal No. 3582. Mr. Shaw, you may make your statement.

* * *

The Court: Very well. Mr. Tulin.

Mr. Tulin: Your Honor, I'd like at this time to renew the defendant's motion for judgment of acquittal and I base this motion of renewal upon the court's written decision of December 31, 1957. Now, on page two in the second paragraph of that decision I think the court accurately states the law; which law I am in accord with. In paragraph two it states that the sole issue to be determined by the court in this case is whether one who has collected taxes under a city ordinance authorized by Territorial statute can now refuse to pay said taxes to the tax authority on the ground that the law under which the taxes were collected was illegal and void. Now, as I said, I am in accord with that statement of the law; however, in the factual situation before us the defendant here has never denied the right of his principal to receive the taxes. He has collected them. He has never denied the right of Palmer to have the money. All he says is that he was late in getting it in. He is not charged, you

will note, with failing to pay over the sales tax, but rather he is charged with failing to timely pay that sales tax. * * *

(Mr. Tulin having completed his argument, Mr. Shaw and Mr. Plummer addressed the court, and thereafter the following proceedings were had:)

The Court: Mr. Hagen, will you please come forward with your counsel. Motion for judgment of acquittal is denied. I feel that Mr. Plummer has pointed out the real issue, he felt that if Mr. Hagen wanted to test the constitutionality of the statute he would have refused to have collected everything; having once collected it I feel you are not in position to raise that issue at this time.

* * *

United States of America,
Territory of Alaska—ss.

I, Iris L. Stafford, Official Court Reporter of the above-entitled Court, hereby certify:

That the foregoing is a true and correct transcription of excerpt of proceedings in the above-entitled cause taken by me in stenograph in open court at Anchorage, Alaska, on the 6th day of January, 1958, and thereafter transcribed by me.

/s/ IRIS L. STAFFORD.

[Endorsed]: Filed April 4, 1958.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE
ORIGINAL RECORD

I, Wm. A. Hilton, Clerk of the above-entitled court, do hereby certify that pursuant to Rule 10 (1) of the Rules of the United States Court of Appeals, Ninth Circuit, and Rules 75 (g) and 75 (o) of the Federal Rules of Civil Procedure, I am transmitting herewith the Original Papers in my office dealing with the above-entitled action or proceeding.

The papers herewith transmitted constitute the record on appeal to the United States Court of Appeals, Ninth Circuit, San Francisco, California, from Judgment filed and entered in the above-entitled cause by the above-entitled court on the 7th day of January, 1958.

Dated at Anchorage, Alaska, this 7th day of February, 1958.

[Seal] /s/ WM. A. HILTON,
Clerk.

cc: Charles E. Tulin,
John D. Shaw.

[Endorsed]: Filed February 24, 1958.

[Endorsed]: No. 15926. United States Court of Appeals for the Ninth Circuit. Alfred V. Hagen, Appellant vs. City of Palmer, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Third Division.

Filed: February 24, 1958.

Docketed: March 12, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Case No. 15926

ALFRED HAGEN,

Appellant,

vs.

CITY OF PALMER, ALASKA,

Appellee.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD ON APPEAL

Appellant hereby makes the following statement of points on appeal and designates the following portions of the record as the record on appeal:

1. The District Court erred in denying the appellant's motion for judgment of acquittal.
2. The District Court erred in confirming the conviction of appellant in the Magistrate's Court of the City of Palmer, Alaska, and entering the same as the judgment of the District Court.
3. The District Court erred in upholding the validity of Ordinances Nos. 10, 40 and 48 of the City of Palmer, Alaska, and sustaining a criminal conviction thereunder.
4. The District Court erred in failing to take judicial notice of the repeal of the Territorial Enabling Statute under which the aforementioned ordinances were enacted, prior to enactment thereof.

5. The District Court erred in holding that appellant was "estopped" to deny the validity of the ordinances under which he was convicted.

6. The District Court erred in affirming appellant's conviction on a charge of failure to pay a municipal sales tax, in the face of the stipulated fact that appellant had filed his return and surrendered the tax monies collectable thereunder.

7. The District Court erred in finding appellant guilty, upon trial de novo on stipulated facts, of the charge of wilfully or intentionally failing, neglecting or refusing to comply with the provisions of the sales tax ordinance of the City of Palmer, when the only facts before the District Court indicated a tardy filing of the return, but compliance with the requirements of collection, making of return and paying over of the tax monies collected and nothing was stipulated or offered in evidence with respect to appellant's wilfulness or intent.

8. The District Court erred in finding appellant guilty and imposing sentence merely upon the facts stipulated for the limited point raised by the motion for judgment of acquittal, without further trial de novo or admission of evidence upon the issues of fact not stipulated or otherwise before the court.

9. The municipal ordinances under which appellant was convicted are void.

10. There is no evidence in the record on appeal to sustain a conviction of the appellant of any crime. The District Court in summarily finding appellant guilty and sentencing him in the course of disposing of appellant's motion for judgment of acquittal upon certain stipulated facts deprived appellant of his statutory right to a trial de novo and to trial by jury and thereby deprived him of liberty without due process of law.

Appellant hereby designates the entire record made in the District Court and in the Magistrate's Court of the City of Palmer, Alaska, together with this statement of points and designation as the record on appeal herein.

BOYKO, TALBOT & TULIN,
Attorneys for Appellant,

By /s/ EDGAR PAUL BOYKO.

[Endorsed]: Filed May 13, 1958.